

OFFICE OF THE PUBLIC DEFENDER

I. DEPARTMENT MANDATE

Competent legal representation for indigent clients in the Municipal and Superior Courts of Contra Costa County is a mandated service for local government. The mandate is rooted (1) in the United States Constitution's Sixth Amendment and (2) in Government Code Section 27706. Accused persons who face imprisonment for a misdemeanor or felony charge and cannot afford counsel or where the law otherwise directs, are entitled to services of the Department.

II. MAJOR PROGRAM DESCRIPTIONS

A. PUBLIC DEFENDER

Provides counsel as needed in mandated legal representation of indigent adult defendants in criminal proceedings; of juveniles in Superior Court in delinquency matters and all parties in dependency matters upon appointment by the Court or request of the juvenile; and of persons involved in mental illness proceedings and probate guardianships. In cases where there are multiple defendants entitled to the Public Defender or in other situations where there may be a conflict between the potential client and the Main Branch of the Department, the case may be assigned to the Alternate Defender Office or to the Special Defender Project, separate entities from the main office for legal representation purposes, but performing the same tasks.

BUDGET: \$17,751,100

FTE: 122

Table 1

CLASS	ALLOCATED POSITIONS
Public Defender and Management Attorneys	9
Deputy Public Defender IV	32
Deputy Public Defender III	37
Deputy Public Defender II & I	2
Investigators/Social Worker/Paralegals	16
Support Employees	26

Table 2

EMPLOYEE PROFILE	Male	Female	Total	Percent
Caucasian	34	49	83	71.0
Hispanic/Latino	3	4	7	6.0
African/American	4	11	15	12.8
Pacific Is/Asian	4	8	12	10.3
Native American	0	0	0	0
Total	45	72	117	100.0
Percentage	38%	62%		

III. DEPARTMENT ACCOMPLISHMENTS

A. FACILITIES

1. West County Facilities

During the past year the Department worked with a number of other county departments in developing plans for the renovation of the West County Branch that is now housed in two separate offices on Bissell Avenue across from the Courthouse in Richmond.

The entire two-story building at 3811 Bissell was purchased so that the Department's West County Branch could be consolidated in that single building. The Capital Facilities Division of the County Administrator's Office secured bond financing for the purpose of funding the rehabilitation. Recently the Architectural Division of General Services completed a request for bids and the bid process was completed in May 2003. In addition to doubling the office space in a consolidated building, the inadequate heating and air conditioning systems will be upgraded, handicapped access will be incorporated for the first time, and other major improvements for security will be incorporated into the improvements. When the renovation is completed the building will comply with Federal and state laws, better serve our clients and provide a safe, more efficient working environment for the Department's West county staff.

B. TECHNOLOGY

1. Department's Computer Network

Networked computer support to facilitate the Department's mission of serving clients has been augmented during the past year. In conjunction with DOIT, several projects were completed to enhance and make staff use of the Law & Justice Information Systems (LJIS) more efficient. For example, handwritten data pertaining to client identifying information, future court dates, charges etc. was traditionally entered by attorneys and support staff before and during

client intake. Now, in advance of interviews, information is automatically printed from identifying and case related data mined from the LJIS system as files are prepared. The Department is realizing significant time savings in file preparation and client interviews; also, errors are more infrequent as a result of more accurate and readable information used by staff at later court appearances.

Additional computer network administration staffing has shortened response times to user problems that previously had overwhelmed our one-person computer services staff. The entire legal staff has become much more adept at using the tools available over the Department's network linked to LJIS and to other Internet resources.

The Department's Intranet system has also been improved during the past year. Databases for juvenile dependency cases have been expanded and improved and a database for delinquency cases has been developed. Other administrative databases for tracking and monitoring administrative expenses incurred for experts, forensic analysis, court reporters and other litigation costs have been incorporated into the administration of the Department.

2. The Department's Internet Site

The Department's Internet site is a focal point for community outreach to the public and recruitment of staff. Virtually every applicant interviewed for a position in the Department reports having reviewed and gained valuable information about the Department from the website. The site now provides pertinent information for interested job seekers, potential clients and the general public.

C. TRAINING & STAFF DEVELOPMENT

The Department's Legal Practice Training Committee has developed, coordinated and presented a number of one day training programs on legal holidays when Department staff works, but the courts are not in session. Training sessions have focused on areas of interest such as mental health issues, immigration law, jury selection and other topics that staff may encounter in different practice situations. All training programs provided by the Department are authorized for credits under the MCLE professional training requirements of the State Bar of California. Finally, we have invited members of the Criminal Law Section of the Contra Costa Bar Association to attend our presentations and several local attorneys have taken us up on this invitation.

The Department's internal newsletter has continued quarterly publication. It continues to be a vehicle for keeping the whole Department staff apprised of new developments and issues that impact the Department mission and staff.

D. CONTRA COSTA CLEAN SLATE

The Department's two-year project called Contra Costa Clean Slate provides record expunging services to persons who come to the offices of our partner agency (EHSD) seeking employment opportunities. Individuals facing the reality that their past record of contact with the criminal justice system is a barrier may request mitigation. Removing those barriers to employment is the chief objective of the program.

In fiscal year 2001-02, the staff attorney assigned to the program conducted five training sessions for EHSD counselors relating to the legal eligibility criteria for criminal record reductions, obtaining pardons, the sealing of arrest records, and the positive benefits a client can obtain by seeking relief through court action. During the first year of operation the program was successful in obtaining relief for the referred clients in 94% of the cases presented to the Contra Costa County Superior for court action. For the current fiscal year, through March 31, 2003, the success rate is even better, at 96%.

In the current fiscal year, through March 31, 2003, the attorney assigned to this program has assisted 91 clients referred by EHSD and has presented 25 cases to the Contra Costa County Superior Court seeking reduction or dismissal of charges. In those cases, 54% of the clients were from West County, 29% from East County, and 17% from Central County. Currently there are 25 active cases pending in the Superior Court.

IV. DEPARTMENT CHALLENGES

A. INTERNAL TO DEPARTMENT

1. Reduced Staffing

Through attrition (retirements) and normal turnover, a number of staff positions have gone unfilled. Due to the "freeze" which has been in effect misdemeanor caseloads have increased even though the total number of clients referred to the Department has declined from the previous year. During the year, caseloads were staffed by a smaller number of deputy public defenders. Additional staff reductions have had an impact on the Department's felony attorney assignments across all the three branches of the Department. As a result, the number of cases handled by each attorney has not diminished in concert with the slight decline in criminal referrals. Finally, staff

attorneys have been reassigned from traditional criminal caseloads to provide representation in Sexually Violent Predator cases, contempt cases and in certain therapeutic courts, which focus upon domestic violence cases and Proposition 36 drug cases.

2. Continuing Operations During West County Facility Rehabilitation

The prospect of having better office facilities for staff and clients in West County is an exciting part of the Department's future. However, managing the transition to a newly refurbished facility will present significant operational difficulties in the coming year. As many as half of the attorneys currently housed at 3707 Bissell must be moved from that building by August 1, 2003, and the target date for completion of the rehabilitated office space at 3811 Bissell is early Spring of 2004. Moreover, the attorneys and staff presently at 3811 Bissell will also face a period of displacement as renovations proceed in that space. All this must be accomplished while continuing to serve the clients. The logistics for our Department for this project appear daunting.

B. INTERNAL TO COUNTY OPERATION

1. Continuing High Rate of Jury Trials

Each year a centerpiece of this report is data regarding the Department's performance in conducting jury trials. In reliance on some of the few countywide, comparative statistics available from a statewide agency – The Judicial Council of California – this annual Performance Report focuses on quantifiable, objective data that supports a strong inference of quality representation in the criminal defense bar on a county-by-county basis. Competent, zealous and effective professional advocacy for the criminally accused requires that defense attorneys regularly challenge in a courtroom before a jury the charges brought against clients. When the percentage of cases (viewed in the context of a statistically significant sample size of thousands of cases) plea bargained and “disposed of” without putting the prosecution to its proof is quite high, it is reasonable to question whether sufficient resources, zeal and advocacy are being provided to the accused defendants in that county's criminal justice system. On the other hand, when the system wide percentage of cases tried to juries is high, an inference of good representation consistent with the professional ideals of zealous advocacy in defense of the criminally accused is stronger.

The high rate at which jury trials are conducted in Contra Costa County in comparison with other urban California counties presents a challenge. It is a challenge our Department meets with pride, but not

without significant costs in resources of staff time, budget dollars and emotional energy. One felony jury trial consumes on average five full days of attorney time during the trial itself, without regard to pretrial preparation and post trial proceedings. Misdemeanor jury trials usually consume a minimum of two days of attorney time exclusively devoted to one case of one client. Greater use of investigation resources and clerical support for cases that go to trial add to the burden. An increase in, or reduction of, the rate of conducting jury trials in a year's time by a percentage point ripples through the workload of the office and can have a significant impact on how thin resources are utilized.

Viewed with this background in mind, the table on the next page sets out the number of jury trials as a percentage of felony filings in the fourteen largest counties in the state during the 12 months of the 2001-2002 fiscal year.¹

Table 3 and the related chart show that Contra Costa County ranked first in the state for the largest 14 urban counties in the number of jury trials conducted in misdemeanor cases (criminal cases for which the sentence cannot be to state prison.)

Table 4 and the related chart show that Contra Costa County ranked third in the state for the largest 14 urban counties in the number of jury trials conducted in both misdemeanor cases and in felony cases (cases for which the possible sentence includes incarceration in state prison.)

¹ Judicial Council of California, Court Statistics Report for 2001-2002, Tables 7 & 8.

Table 3

Misdemeanor Trial Comparisons			
<i>County</i>	<i>Filings</i>	<i>Trials</i>	<i>Percentage</i>
Contra Costa	10,099	144	1.43%
Ventura	10,931	144	1.32%
San Francisco	5,478	70	1.28%
San Diego	33,456	414	1.24%
San Mateo	6,356	75	1.18%
Los Angeles	137,769	1,414	1.03%
Orange	43,248	384	0.89%
Riverside	20,973	136	0.65%
Kern	16,110	66	0.41%
Santa Clara	23,314	83	0.36%
Alameda	22,601	78	0.35%
San Bernardino	31,524	97	0.31%
Fresno	25,361	27	0.11%
Sacramento	unreported	n/a	n/a

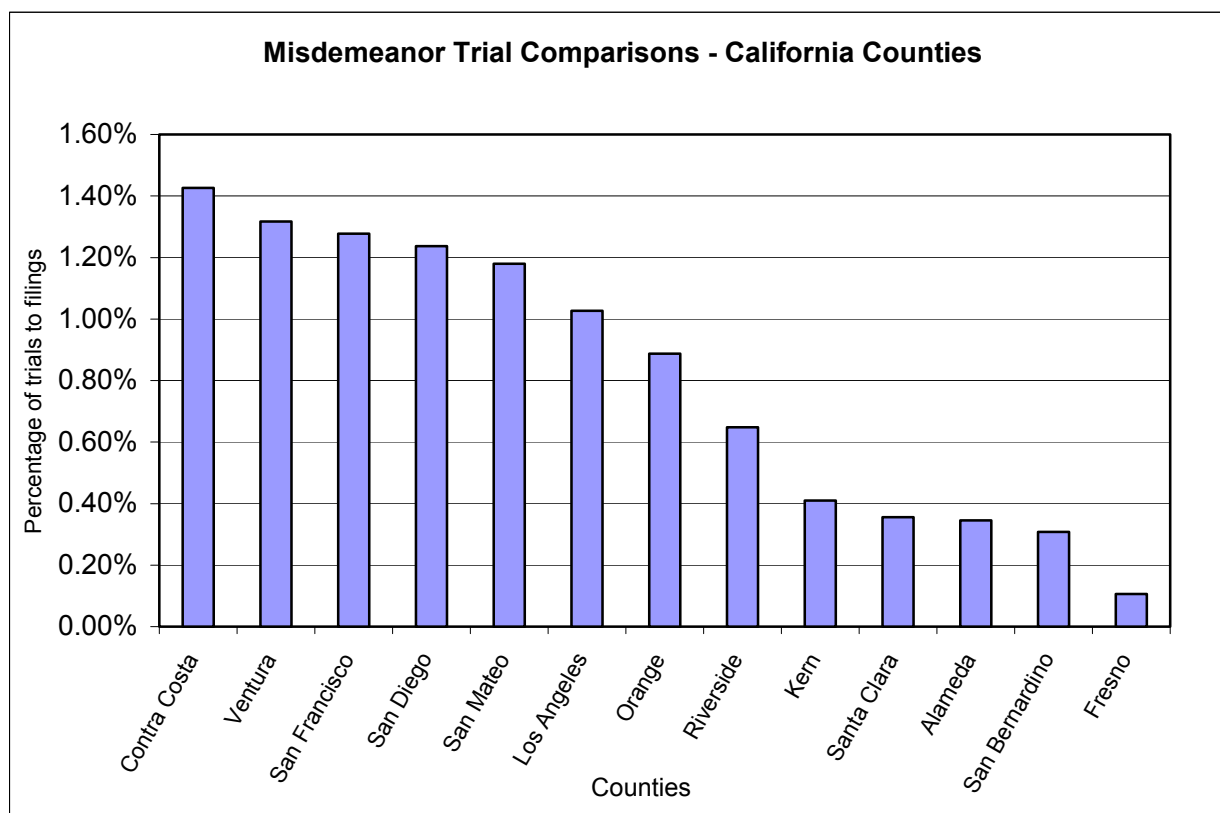
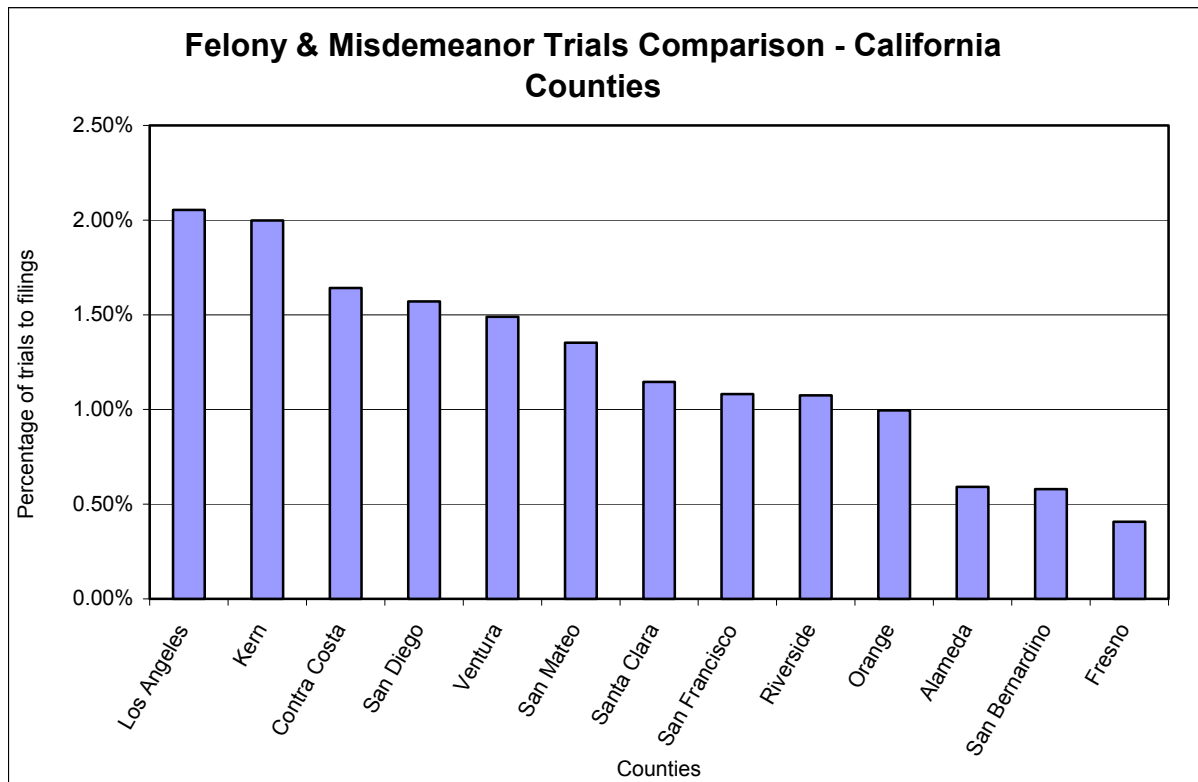


Table 4

Felony and Misdemeanor Trial Comparisons			
<i>County</i>	<i>Filings</i>	<i>Trials</i>	<i>Percentage</i>
Los Angeles	194,173	3,987	2.05%
Kern	21,915	438	2.00%
Contra Costa	15,109	248	1.64%
San Diego	49,719	781	1.57%
Ventura	13,497	201	1.49%
San Mateo	9,170	124	1.35%
Santa Clara	35,088	402	1.15%
San Francisco	12,292	133	1.08%
Riverside	34,601	372	1.08%
Orange	56,322	561	1.00%
Alameda	31,273	185	0.59%
San Bernardino	47,078	273	0.58%
Fresno	36,780	150	0.41%
Sacramento	Unreported	n/a	n/a



2. **Justice System Technology Integration**

The Department has been notified by the Superior Court that all trial courts in California are now mandated to develop a separate (but common) platform for their computer systems. In criminal cases Contra Costa County has had a significant degree of interactivity and interdependence between the Superior Court's daily calendar, criminal case file data from the Clerk's Office and other functions in Juvenile and Family Law staffed by law departments such as ours. Though the court's plans are in their infancy, they portend over the next year or more that there will have to be significant amounts of administrative oversight, planning and other staff time devoted to the fallout of the Superior Court's decision to revamp its computer technology systems.

This will impact many of Contra Costa's public protection departments including the Sheriff, Probation, District Attorney and other local agencies. It will significantly impact our Department since our service to the clients is primarily provided in the Superior Courts.

3. **Specialized Courts and Caseloads**

The Department's workload in special "therapeutic" courts (e.g. domestic violence court or Proposition 36 drug court) in Contra Costa County continued to grow over the past year. In these special therapeutic courts, the defendant in effect is placed in trusteeship of the Court. The Judge is much more intimately involved in monitoring a variety of requirements lumped under the rubric of "treatment." Thus, defendants are required to appear in so-called therapeutic court more often (e.g. every 30 or 90 days) for progress review. Failure to meet the expectations of the judge about treatment progress can result in sanctions up to and including revocation of probation and incarceration for the full period prescribed by law.

Traditionally, the Office of Public Defender has been organized on what is called a "vertical" model. Clients are assigned to a specific individual staff attorney's caseload for representation throughout all phases of the case. Now, the need for many more court appearances on such a frequent basis (even without an allegation of a violation of probation) presents a special challenge to assigning cases and calendaring appearances for attorneys. Whatever savings in Departmental resources (attorney time, investigation resources, expert witnesses) that may be realized when "treatment" (as opposed to immediate long term incarceration) results as a disposition in certain kinds of cases, those resource savings for the defense are lost when continuing representation in the special treatment court proceedings require more time and more prolonged use of resources than the case would have required in a traditional criminal court. Less punitive punishment for the Department's clients does not translate

into less expenditure of resources for the Department. Indeed, in many treatment courts, the resources required of the defense on a give case may be greater.

4. **Caseload Profiles in Therapeutic Courts**

(a) **Proposition 36**

During the past year staff attorneys from the Department have regularly appeared at each of the Superior Court's Proposition 36 calendars for both felony cases and misdemeanor cases in the branch courts. The Probation Department records indicate that there are over 600 defendants under *active* Proposition 36 supervision and over 200 defendants who will be appearing if, and when, arrested as they are in bench warrant status.

Not all of those defendants are clients of the Department. Some have privately retained counsel and some continue to appear in *pro per*. However, the lion's share of those defendants are counseled by Department staff at court appearances and have active cases in which we provide representation on the Prop 36 calendar. Such calendars – because the clients are ordered to appear in court in 30 to 90 day cycles – often have between 75 to 100 cases for review.

(b) **Domestic Violence Court**

One of the most visible components of the Zero Tolerance Domestic Violence program of the various county departments has been the establishment of a special calendar of domestic violence cases in Department 9 of the Superior Court. Clients of the Department appear regularly on the weekly domestic violence calendar.

Over the past full year of operation of the Domestic Violence Court, our cases on that calendar have averaged 10 to 15 each week, or on an annualized basis, between 500-750 appearances for about 150-200 defendants on formal domestic violence probation.

(c) **Sexually Violent Predator Cases**

Three years ago the law notoriously known as the Sexually Violent Predator Act (SVP) went into effect. Over the past year, the Department's attorneys conducted as many as a dozen jury trials and several ancillary motions and proceedings in these complex "civil cases" in the Superior Court. These trials customarily take two to three weeks to complete; as civil cases, they entail taking depositions in and out of Contra Costa County. Numerous experts are involved on both sides of the case.

Presently, approximately 1.5 FTE attorneys on our staff are involved in the representation of prospective SVP offenders. Each offender is entitled to a trial every two years. Since not one such offender has yet to complete the program, a consistent and recurring number of these trials will occur each year. Further, as time passes and convicted sex offenders who qualify under the SVP Act are about to be released, it can be anticipated that they will be added to the Department's revolving caseload of SVP clients.

Most critically, this representation function has been partially funded by SB 90 funds from the State. However, due to the present State budget crisis, the Department has been notified that the funding for the staff and expenses expended in these cases will be delayed for as much as a year. In effect, this means that the SVP representation function that was grafted on to our mandate over the past three years is being borne this year completely at county expense and as an expense to the Department's budget with no prospect of reimbursement during the forthcoming fiscal year.

C. EXTERNAL TO COUNTY OPERATION

1. Attracting and Retaining a Qualified and Diverse Staff

The disparity in attorney salaries, particularly starting salaries, between the private sector and those salaries the Department can offer, has always been, and probably always will be, an impediment to attracting and retaining highly qualified attorney staff. The fact that law school graduates are increasingly burdened with debt from educational expenses does nothing but aggravate this problem. Moreover the burden of debt is often greater on graduates who come from less wealthy families and this makes it even more difficult to attract a diverse staff.

Operating in our favor in the competition for the highest quality attorneys is the outstanding reputation of our Department and our commitment to vertical representation. We hope that some steps can be taken to ensure that the salary disparity will be minimized so that we can continue to provide a high level of representation and retain a diverse staff.

Salary disparities for clerical and investigator staff are also significant enough to have an adverse impact on our ability to attract qualified individuals. We have experienced difficulties staffing clerical positions, often losing employees soon after they are trained because they move on to higher paying jobs. Our clients often have their first contact with

our Department through these individuals. Our clerical staff members are first responders to hundreds of telephone calls we receive each day. We must be able to attract and retain people who can demonstrate a high degree of professionalism from the outset. It will be a continuing challenge to fill entry-level positions with qualified people given the current level of salary and benefits.

2. **New Rules on Death Penalty Counsel Appointments**

On January 1, 2002, a new California Rule of Court 4.117 went into effect. The new rule requires that all criminal defense attorneys, including public defenders, appointed in capital cases meet certain minimum experience qualifications including 10 years of criminal law practice, trial of at least two murder cases to verdict, experience in trying other serious felony cases and attendance at mandatory training sessions for capital defense attorneys. Contra Costa County, as previously recounted in prior Performance Reports and before recent sessions of the Board of Supervisors, has a high rate of charging and trial of capital cases in comparison with other California counties. Now, defense counsel in such cases must be drawn from a narrower band of extremely skilled and experienced attorneys in our Department. It will be a continuing challenge to retain staff attorneys in the Department who meet the Judicial Council qualifications as more senior attorneys reach retirement age. Providing qualified counsel in such death penalty cases as defined under these new requirements will place a greater strain on the resources of the Department.

V. **PERFORMANCE INDICATORS**

A. **DEPARTMENTAL PERFORMANCE BY CASELOAD**

The following chart shows the major categories of cases referred to the Department with an approximate number of full-time attorneys assigned to handle each type of case (including the Main Branch and the ADO).

	<i>Number of Cases</i>	<i>Number of Attorneys</i>	<i>% of Atty. Staff</i>
Misdemeanors	8,873	11.0+	14%
Felonies	4,364	40.0+	50%
Juvenile Delinquency	2,473	6.5	9%
Juvenile Dependency	1,594	17.0	22%
Mental Health (LPS)	511	0.5	1%
Miscellaneous	2,618	4.0	5%
	20,433	80.0	

B. DEPARTMENTAL PERFORMANCE GAUGED BY POSITIVE CASE OUTCOMES FOR CLIENTS

A person accused of a crime benefits from representation by an attorney. An attorney reviews the prosecution's case with a professional eye to determine the strengths and weakness of the case and advises the client about how to proceed. An attorney who reviews the case can identify any legal or factual impediments in the prosecution's case. An attorney can negotiate a disposition, conduct an investigation and in many instances use courtroom forensic skills that weaken or diminish significantly the peril faced by the client. Having skilled counsel for the accused invariably leaves the client better off than a client who represents him/herself. Indeed, it was this very obvious fact that caused the United States Supreme Court to mandate the appointment of counsel in local trial courts 40 years ago in *Gideon v. Wainwright*.

In the effort to provide the general public with quantifiable information, prosecutors and law enforcement often point to a "conviction" rate of more than 90% for cases they charge in court. In an attempt to identify specific and quantifiable case outcomes that mirror those "conviction rate" statistics sometimes cited by prosecutors and law enforcement, in our last performance report we analyzed the degree to which clients of the Department were positively benefited by *not* suffering a conviction for a crime charged. Our focus was on the opposite statistical viewpoint from that of the prosecution: the rate of **non-conviction** for clients of the Public Defender.

A **non-conviction** was defined as one or more of the charges brought by the prosecution that was either dismissed by the Court or found through court action (a trial or preliminary examination) to have not been proven. The data for this analysis was drawn from a representative random sample of adult criminal cases during a randomly chosen period within the past fiscal year.

As in last year's report, a sample of twenty felony cases and twenty misdemeanor cases were examined. A **non-conviction rate of 95%** in felony cases means that a positive outcome was obtained by virtue of one or more charges being dismissed or found to be unproven by a court or jury before the disposition of the case. With a **non-conviction rate of 90%** in our misdemeanor cases, a positive outcome for the client was obtained by virtue of one or more charges being dismissed or found not true by a court or jury before the disposition of the case.

This year marks the 40th anniversary of the Supreme Court's *Gideon v. Wainwright* decision that imposed on counties like Contra Costa a constitutional mandate to provide counsel to indigent persons accused in its criminal courts. For 37 of the past 40 years since the appointment of the first Public Defender in Contra Costa County, the Department has provided representation to indigent persons in hundreds of thousands of cases in the

county's courts. The mandate and responsibility is carried out – as it always has been –by talented and committed staff of the Department who struggle to fulfill the County's constitutional commitment to ordered liberty.

5/1/2002

